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Can you really be GM-free? Why new European laws pose a moral dilemma

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Having your GM feed and eating it?

The [EU has proposed measures](#) that will [further de-harmonise](#) the EU regime surrounding genetically modified organisms (GMOs). This [Proposal](#) would allow Member States to 'opt-out' from the use of GM food and feed, thereby mirroring [legislation](#) passed earlier this year allowing Member States to opt-out from GM cultivation. The official primary aim: to allow Member States to impose restrictions on GM food and feed to protect legitimate objectives '[in respect of democratic choice and in the interest of consistency](#)', where the relevant criteria are met. But, will this really provide Member States with the freedom that they might expect? Can they pick and choose from different GMOs, whether crops, food or feed?

The starting point for Member States is that the restrictive measures must be in compliance with EU law. This firstly requires that any measures be necessary to protect a relevant legitimate objective – as environmental and health considerations dealt with under the authorisation process are a no-go (safeguard measures remain possible in theory), this presumably leaves primarily objectives such as public morality and consumer protection for GM food and feed, with further objectives including agricultural policy, preventing admixture and land use for GM crops. Even then, there must still be no arbitrary discrimination or disguised protectionism.

Consider the example of Ireland and Italy, who may shortly be faced with serious headaches. Both Ireland and Italy have green images and agriculture is one of their major industries. Both have [mixed](#) feelings regarding GMOs and both have interests in prohibiting certain products, but crucially not all. In particular, a substantial proportion of feed used in animal production in both [Italy](#) and Ireland is of GM origin. A [2010 report](#) indicated that more than 90% of protein feed for livestock in Ireland contained EU authorised GM varieties. Furthermore, due to the significance of feed imports to the agricultural industry nationally and the difficulty in guaranteeing zero admixture, Ireland supported the amendments to [EU legislation](#) allowing for temporary tolerances of unauthorised GM feed at a level of 0.1%. Even if they would avoid GM feed in neutral circumstances, the market has created a high level of dependency by national producers on GM feed.

This adds to a dilemma surrounding specific products produced nationally with GM counterparts produced outside the EU. For instance, rapeseed has become an important crop nationally in [Ireland](#) ([similarly in the UK](#)). Although GM rapeseed is not authorised for cultivation in the EU (currently), GM rapeseed food and feed products are [authorised across the EU](#). Further, Italy is Europe's [main producer of soybeans](#). As with rapeseed, GM soya is not authorised for cultivation, but GM soya food and feed products are authorised across the EU. Therefore, national producers (all non-GM) are in competition with those beyond the EU (GM and non-GM). Whilst national dependency on GM feed would negate any desire to restrict GM rapeseed and soya feed, Ireland and Italy might be tempted to give their national producers a helping hand by attempting to prohibit GM rapeseed and soya food products. Yet, if either State were to prohibit these GM foods and not

others, irrespective of any legitimate objective claimed, it would indicate arbitrary discrimination – whether [direct](#) or [indirect](#).

What of a general ban on GM food, based on consumer protection or public morality? Yet, whilst relevant, consumer protection could likely be sufficiently protected by labelling, which is [already required](#) (even if not considered full and accurate information). Public morality might justify such restrictions, but if purely on GM food this would appear hypocritical. If public morality justifies a national ban on GM food, why is no such ban required for GM feed and GM crops also? Especially if the GM feed or crops lead eventually to the creation of food? This mirrors the [Seal Products Dispute](#) before the WTO – a State cannot avail of public morality in an inconsistent manner on the same issue. The sole legitimate objective that could realistically potentially justify restricting one GM food and not another, or GM food generally and not feed or crops, would be for environmental and health reasons, but this is expressly excluded under the proposed legislation.

Consequently, in the future Ireland and Italy may be able to impose unilateral restrictions on GM crops, food or feed for a range of legitimate objectives. They could indeed be truly 'GM-Free'. However, if you claim that public morality justifies prohibiting GM crops or food, you cannot then backflip and still permit GM feed. Restrictions on cultivation might be permitted without restrictions on other GM products, but this is due to it also promoting separate objectives such as protection of traditional agricultural practices, agricultural policies and producer choice. For the measures to be acceptable, they must be consistent.